

“WHITE COLLAR” EXEMPTIONS

Hawaii law and the new Federal regulations regarding Overtime

The United States Department of Labor adopted rules effective August 23, 2004 on the exemptions for executive, administrative, professional, outside sales, and computer employees. Questions about overtime pay for the Hawaii “white collar” workers have arisen in light of the Federal amendments to the rules. Because Hawaii law and rules have not changed, there is no change in the way Hawaii law is interpreted or applied. The following is intended to provide you with general information about the Federal law compared to the State law as it relates to overtime and is meant to serve as a guide only.

For more information about the federal rules, go to the United States Department of Labor’s website at <http://www.dol.gov/elaws/esa/flsa/overtime/menu.htm>. If an employer is covered under federal law and its employee is determined exempt under federal law, then it is possible that the employee could still be entitled to overtime pay under State law. Whether an employee is covered under federal law is determined by the United States Department of Labor. Whether an employee is exempt or not will be determined based on all the facts in a particular case.

If an employee is not covered by federal law, there is no change in an employee’s status under the State Wage and Hour law.

If an employee is covered by a collective bargaining agreement, the union should be consulted.

If you have questions or concerns about whether an exemption under State law applies, call the Wage Standards Division of the State of Hawaii Department of Labor and Industrial Relations at 586-8777.

FAIR LABOR STANDARDS ACT (“FLSA”) and Regulations (Federal)	HAWAII WAGE AND HOUR LAW (Chapter 387, Hawaii Revised Statutes, and Chapter 12-22, Hawaii Administrative Rules)	What this means for the Hawaii employer and employee
Who is covered under federal law?	Who is covered under state law?	
All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA. A covered enterprise is the related activities	All employees of an employer (but not the State or any political subdivision or the United States), but does not include an employee subject to the federal law. <i>For more information, see section 387-1, Hawaii Revised Statutes at</i>	First, consult U.S. Department of Labor for a determination as to whether federal law applies. If an employer is covered under federal law and its employee is not entitled to overtime under federal law, but qualifies for overtime under State law,

<p>performed through unified operation or common control by any person or persons for a common business purpose and --</p> <ul style="list-style-type: none"> ▪ whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or ▪ is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or ▪ is an activity of a public agency. <p><i>For more information, go to the Handy Reference Guide to the FLSA at: http://www.dol.gov/dol/compliance/comp-flsa.htm</i></p>	<p>http://www.capitol.hawaii.gov/hrscurrent/Vol07_C_h0346-0398/HRS0387/</p>	<p>the State law applies. The employee is entitled to be paid overtime wages.</p> <p>If an employer is not covered under federal law, State law applies and State law will be applied to determine whether an employee is entitled to overtime pay.</p> <p><i>See below for more information about the “white collar” exemptions.</i></p>
<p>Who is exempt from overtime pay under federal law?</p>	<p>Who is exempt from overtime pay under state law?</p>	
<p>Note: This overview is limited to “white collar” exemptions only. Other exemptions may apply. Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, individuals generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply,</p>	<p>Certain categories of employees are exempt. This is not an exhaustive listing of all the exemptions under Hawaii law, but these are relevant for comparison to the new federal rules:</p> <ul style="list-style-type: none"> ▪ Individuals with a guaranteed compensation totaling \$2,000 or more a month, whether paid weekly, biweekly, or monthly are not covered by the Wage and Hour Law ▪ Individuals employed in a bone fide executive, administrative, supervisory, or professional capacity or in the capacity of outside 	

<p>an individual's specific job duties and salary must meet all the requirements of the Department's regulations. <i>For more information, go to:</i> http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</p>	<p>salesperson or as an outside collector.</p> <p><i>For more information see section 387-1 at http://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0387/</i></p>	
<p>What is the executive exemption under federal law?</p>	<p>What is the executive exemption under state law?</p>	
<p>The bona fide executive employee exemption, requires that all of the following tests be met:</p> <p>Salary requirement The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$455 per week;</p> <p>Duties The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise; The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees is given particular weight.</p>	<p>The bona-fide executive employee exemption, requires that all of the following tests be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The individual must be compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); <p>Duties</p> <ul style="list-style-type: none"> ▪ The individual's primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof; ▪ The individual customarily and regularly directs the work of two or more employees; ▪ The individual has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion or any other change of status of other employees is given particular weight; and ▪ The individual customarily and regularly exercises discretionary powers. 	<p>Because Hawaii rules are similar to the former federal regulations, prior federal interpretation provides guidance. Thus, if the individual meets the salary requirement and the individual was previously exempt as a bona fide executive under federal and state law, the individual will continue to be exempt from the overtime requirements under Hawaii law.</p> <p>The exemption under federal law no longer requires the exercise of discretion and independent judgment, but Hawaii law does. Thus, if an individual is exempt under federal law, but does not meet the test for "customarily and regularly" exercising discretionary powers, the individual would not be exempt under Hawaii law.</p>

<p>Exemption of Business Owners Under a special rule for business owners, an employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive.</p> <p><i>For more information, go to:</i> http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</p>	<p>Business Owners</p> <p>There is specific exemption for business owners under State law.</p> <p><i>For more information, see Rule 12-20-2 at http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</i></p>	
<p>What is the administrative exemption under federal law?</p>	<p>What is the administrative exemption under state law?</p>	
<p>To qualify for the administrative employee exemption, all of the following tests must be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; <p>Duties</p> <ul style="list-style-type: none"> ▪ The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and ▪ The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 	<p>To qualify for the administrative employee exemption, all of the following tests must be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The individual must be compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); <p>Duties</p> <ul style="list-style-type: none"> ▪ The individual's primary duty consists of the performance of office or non-manual field work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment; ▪ The individual may be a person who regularly and directly assists a proprietor or an individual employed in a bona fide executive or administrative capacity; or 	<p>Because Hawaii rules are similar to the former federal regulations, prior federal interpretation provides guidance. Thus, if the individual meets the salary requirement and the individual was previously exempt as an administrative individual under federal and state law, the individual will continue to be exempt from the overtime requirements under Hawaii law.</p> <p>If all courts reach the same conclusion the United States District Court for the District of Columbia did that the new federal criteria (except for the salary requirement) for a bona fide administrative capacity are essentially the same as the old regulations, then there should be no difference between the way the exemption is applied under federal and state law.</p>

<p>For more information, go to: http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</p>	<ul style="list-style-type: none"> ▪ An individual who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or ▪ An individual who executes under only general supervision special assignments or tasks. <p>For more information, see Rule 12-20-3 at http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</p>	
<p>What is the professional exemption under federal law?</p>	<p>What is the professional exemption under state law?</p>	
<p>To qualify for the learned professional employee exemption, all of the following tests must be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; <p>Duties</p> <ul style="list-style-type: none"> ▪ The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment; ▪ The advanced knowledge must be in a field of science or learning; and ▪ The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. <p>To qualify for the creative professional employee</p>	<p>To qualify for the professional employee exemption, all of the following tests must be met:</p> <p>Salary requirement</p> <p>The individual must be compensated on a fixed salary or fixed fee of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);</p> <p>Duties</p> <ul style="list-style-type: none"> ▪ The individual's primary duty consists of the performance of: <ul style="list-style-type: none"> ○ Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or ○ Work that is original and creative in 	<p>Because Hawaii rules are similar to the former federal regulations, prior federal interpretation provides guidance. Thus, if the individual meets the salary requirement and the individual was previously exempt as a professional individual under federal and state law, the individual will continue to be exempt from the overtime requirements under Hawaii law.</p> <p>For the creative professional exemption, Hawaii law requires more in order to be exempt: the individual must also consistently exercise discretion and judgment and the work must be predominantly intellectual and varied in character.</p>

<p>exemption, all of the following tests must be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week; <p>Duties</p> <ul style="list-style-type: none"> ▪ The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. 	<p>character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the individual;</p> <ul style="list-style-type: none"> ▪ The individual's work requires the consistent exercise of discretion and judgment in its performance; and ▪ Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. 	
Teachers		
<p>Salary requirement The salary and salary basis requirements do not apply to bona fide teachers.</p> <p>Duties Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment. Exempt teachers include, but are not limited to, regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrument music teachers.</p>	<p>Salary requirement The salary requirement shall not apply to an individual who is a bona fide teacher.</p> <p>Duties Teachers are exempt if their primary duty consists of teaching, tutoring, instructing, or lecturing and they are employed and engaged in this activity as a teacher certified or recognized in the school system or educational establishment or institution by which the teacher is employed.</p>	<p>Teachers are likely to be treated similarly under both federal and state law.</p>

Practice of Law or Medicine		
<p>Salary requirement The salary and salary basis requirements do not apply to bona fide practitioners of law or medicine.</p> <p>Duties An employee holding a valid license or certificate permitting the practice of law or medicine is exempt if the employee is actually engaged in such a practice. An employee who holds the requisite academic degree for the general practice of medicine is also exempt if he or she is engaged in an internship or resident program for the profession.</p> <p><i>For more information, go to: http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</i></p>	<p>Salary requirement The salary and fixed fee requirements do not apply to a person who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof or who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or residency program pursuant to the practice of medicine or any of its branches.</p> <p>Duties The individual's primary duty consists of the performance of: Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the individual; or Whose work requires the consistent exercise of discretion and judgment in its performance; and</p>	<p>Individuals practicing law or medicine are likely to be treated similarly under both federal and state law.</p>

	<p>Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.</p> <p><i>For more information, see Rule 12-20-5 at http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</i></p>	
What is the computer employee exemption under federal law?	Is there a computer employee exemption under state law?	
<p>To qualify for the computer employee exemption, the following tests must be met:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> The employee must be compensated either on a salary or fee basis at a rate not less than \$455 per week or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour. <p>Duties</p> <ul style="list-style-type: none"> The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below; The employee's primary duty must consist of: <ol style="list-style-type: none"> 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including 	<p>No. There is no specific exemption for computer employees.</p>	<p>If a computer employee is exempt under federal law, the employee would not be exempt under state law, unless that individual's salary and duties met the requirements of one of the other categories of exemptions. This is a case-by-case determination.</p>

<p>prototypes, based on and related to user or system design specifications;</p> <p>3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or</p> <p>4) A combination of the aforementioned duties, the performance of which requires the same level of skills.</p> <p><i>For more information, go to: http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</i></p>		
<p>What is the outside sales exemption under federal law?</p>	<p>What is the outside sales exemption under state law?</p>	
<p>To qualify for the outside sales employee exemption, all of the following tests must be met:</p> <p>Salary requirement There is no minimum salary requirement that apply.</p> <p>Duties</p> <ul style="list-style-type: none"> ▪ The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and ▪ The employee must be customarily and regularly engaged away from the employer's place or places of business. <p><i>For more information, go to: http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</i></p>	<p>To qualify for the outside salesman exemption, the following tests must be met:</p> <p>Salary requirement There is no minimum salary requirement.</p> <p>Duties</p> <ul style="list-style-type: none"> ▪ The individual is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in: <ul style="list-style-type: none"> (A) Making sales; or (B) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and ▪ The individual's hours of work of a nature other than that described above do not exceed forty per cent of the hours worked in the workweek by non-exempt employees of the employer; 	<p>Compared to federal law, Hawaii law has an additional requirement limiting the number of hours that can be worked in other than sales in order to qualify for an exemption. That additional requirement may result in an employee being entitled to overtime under state law even if exempt under federal law. This determination must be made on a case-by-case basis.</p>

	<p>provided that the hours of work do not include hours of work of a nature other than sales or solicitations which are in excess of five per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the individual's own outside sales or solicitations. The term "sales" shall include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition with respect to tangible and intangible property.</p> <p><i>For more information, see Rule 12-20-6 at http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</i></p>	
<p>What is the “highly-compensated” exemption under federal law?</p> <p>The regulations contain a special rule for “highly-compensated” workers who are paid total annual compensation of \$100,000 or more. A highly compensated employee is deemed exempt under Section 13(a)(1) if:</p> <p>Salary requirement</p> <ul style="list-style-type: none"> ▪ The employee earns total annual compensation of \$100,000 or more, which includes at least \$455 per week paid on a salary basis; <p>Duties</p> <ul style="list-style-type: none"> ▪ The employee’s primary duty includes performing office or non-manual work; and ▪ The employee customarily and regularly performs at least one of the exempt duties or 	<p>Is there a “highly-compensated” exemption under state law?</p> <p>No. There is no specific exemption under state law. However, an individual who receives \$2,000 or more per month guaranteed compensation is exempt, regardless of occupation. Commissions and bonuses are not considered guaranteed compensation.</p>	<p>A highly compensated individual may be exempt from overtime under federal law, but may be covered under state law if the employee receives less than \$2,000 a month in guaranteed compensation and does not meet the requirements under “white collar” exemptions.</p>

<p>responsibilities of an exempt executive, administrative or professional employee.</p> <p><i>For more information, go to:</i> http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm</p>		
<p>Is there an outside collector exemption under federal law?</p>	<p>What is the outside collector exemption under state law?</p>	
<p>No. There is no specific exemption for outside collector.</p>	<p>To qualify for the outside collector exemption, the following tests must be met:</p> <p>Salary requirement There is no salary requirement.</p> <p>Duties</p> <ul style="list-style-type: none"> ▪ The individual is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in: <ul style="list-style-type: none"> (A) Collecting money for goods or services previously or presently furnished by the employer; or (B) Collecting money for an account placed in the hands of the employer for collection; and ▪ The individual's hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed twenty per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the individual's own outside collections. <p><i>For more information, see Rule 12-20-7 at</i> http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</p>	<p>If an employer is covered by federal law, the outside collector may be entitled to overtime pay under federal law, unless other federal exemptions apply.</p> <p>If the employer is not covered under federal law, then a case-by-case analysis must be made to determine whether the State outside collector exemption applies.</p>

Is there a supervisory exemption under federal law?	What is the supervisory exemption under state law?	
No. There is no specific exemption for supervisory employees.	<p>To qualify for the supervisory exemption, all of the following tests must be met:</p> <p>Salary requirement The individual is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities).</p> <p>Duties The individual's primary duty consists of the supervision or direction of other employees; and The individual customarily and regularly directs the work of at least five employees in the enterprise in which the individual is employed. <i>For more information, see Rule 12-20-4 at http://hawaii.gov/labor/legal/rule/wsd/12-20.pdf</i></p>	<p>If an employer is covered by federal law, the supervisory employee may be entitled to overtime pay under federal law, unless other federal exemptions apply.</p> <p>If the employer is not covered under federal law, then a case-by-case analysis must be made to determine whether the State supervisory individual exemption applies.</p>